

AMENDED IN ASSEMBLY JUNE 20, 2002

AMENDED IN SENATE APRIL 16, 2002

AMENDED IN SENATE APRIL 1, 2002

SENATE BILL

No. 1926

Introduced by Senator Costa

February 22, 2002

An act to add Section 22342 to the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1926, as amended, Costa. Finance lenders: live checks.

Existing law, the California Finance Lenders Law, provides for the regulation and licensure by the Commissioner of Corporations of persons engaging in the business of making consumer loans and commercial loans. A willful violation of the California Finance Lenders Law is a crime.

This bill would prohibit those persons from producing, advertising, offering, selling, distributing, or transferring for use in this state, any live check, as defined, unless the check contains a specified disclosure. The bill would prohibit live checks from being negotiable 30 days after the date printed on the live check. The bill would require a loan solicitation made through a live check to be honored in its full amount unless the account on which the solicitation is made is closed prior to the date the check is cashed. The bill would provide safeguards to protect consumers in the event a live check is fraudulently used by someone other than the intended recipient of the live check. The bill would also authorize the commissioner to levy administrative penalties against licensees for willfully violating the bill.

Because a violation of the bill's provisions would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22342 is added to the Financial Code,
2 to read:
3 22342. (a) As used in this section, “instant loan check” or
4 “live check” means any loan or extension of credit that is made
5 available in the form of a check, draft, or any other negotiable
6 instrument that can be deposited in a bank or used for third-party
7 payments. “Instant loan check” or “live check” does not include
8 a check, draft, or any other negotiable instrument provided *in*
9 *response to an application for credit or as a means of access to an*
10 *existing loan or extension of credit, including a home equity or*
11 *personal line of credit.*
12 (b) No person shall produce, advertise, offer, sell, distribute, or
13 otherwise transfer for use in this state any live check unless the
14 document bears the following phrase printed in 12-point type on
15 the front of the document: “THIS IS A LOAN OR AN
16 EXTENSION OF CREDIT. YOU WILL PAY CHARGES.”
17 (c) Live checks shall only be negotiable for a period of 30 days
18 after the date printed on the live check. Printed material
19 accompanying the live check shall advise the consumer to void and
20 destroy the live check if it is not going to be negotiated.
21 (d) Loan solicitations shall be mailed in envelopes with no
22 indication that a negotiable instrument is contained in the mailing.
23 Envelopes shall be marked with “do not forward” instructions to
24 the postal service in the event that the intended addressee is no
25 longer at the location.
26 (e) Any loan solicitation made through a live check shall be
27 honored in the full amount by the issuer unless the account on



1 which the solicitation is made is closed by the consumer prior to
2 the date the check is cashed.

3 (f) In the event that a live check is stolen or incorrectly received
4 by someone other than the intended payee, and the live check is
5 ~~fraudulently~~ cashed or otherwise negotiated *based upon fraud or*
6 *misrepresentation by someone other than the intended payee*, the
7 following safeguards for the consumer shall apply:

8 (1) The creditor, upon receipt of notification that the consumer
9 did not negotiate the live check and is a victim of identity theft as
10 defined in Section 1798.92 of the Civil Code, shall provide, and
11 the consumer may complete, a statement confirming that the
12 consumer did not deposit, cash, or otherwise negotiate the live
13 check.

14 (2) Upon completion of the confirmation statement by the
15 consumer, the consumer who was the intended payee shall have no
16 liability for the loan obligation, absent any fraud by that consumer.

17 (3) Upon receipt of notification that the consumer did not
18 negotiate the live check and is a victim of identity theft as defined
19 in Section 1798.92 of the Civil Code, the creditor shall take
20 appropriate actions set forth in Sections 1785.25 and 1785.26 of
21 the Civil Code.

22 (g) The commissioner may, after appropriate notice and
23 opportunity for hearing, by order levy administrative penalties
24 against a licensee who violates this section, and the licensee shall
25 be liable for administrative penalties of no more than two thousand
26 five hundred dollars (\$2,500) for each willful violation. Any
27 hearing shall be held in accordance with the Administrative
28 Procedure Act (Chapter 5 (commencing with Section 11500) of
29 Part 1 of Division 3 of Title 2 of the Government Code), and the
30 commissioner shall have all the powers granted under the act. The
31 remedy available under this subdivision is in addition to any other
32 remedies available to the commissioner under this division that
33 may be employed to enforce the provisions of this section.

34 (h) Nothing in this section shall preclude the application of any
35 section or rule under this division.

36 SEC. 2. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

- 1 for a crime or infraction, within the meaning of Section 17556 of
- 2 the Government Code, or changes the definition of a crime within
- 3 the meaning of Section 6 of Article XIII B of the California
- 4 Constitution.

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